

GENERAL LEGAL ISSUES

Master Trusts

Master Trusts were created to hold in trust the money and property intended for the use and benefit of children who either are receiving services from DCF or are in DCF's legal custody. Government funds and benefits received by the children are deposited into the Master Trust. DCF has a fiduciary duty to conserve and/or invest these funds and/or benefits on behalf of the children receiving services or in legal custody. Often children receive funds and benefits that exceed DCF's cost of care and remain in DCF's custody until they are 18 years of age. DCF has a fiduciary duty to conserve and/or invest all additional funds and/or benefits, including those that exceed DCF's cost of care, on behalf of the child and until the child is no longer in DCF's custody. Thus, after DCF's cost of care is deducted, the remaining account balance is placed into an individual account for the child, and DCF's fiduciary duties continue. Because children often leave DCF with very little, it is imperative that the balance in their Master Trust Account and the resources purchased with the funds and/or benefits remain protected in order to assist them in the future.

General information.

- Most children with Master Trust Accounts receive Supplemental Security Income (SSI) benefits due to their own disability. They may also receive money from disability and/or death benefits from the Social Security Administration (SSA) and other government benefits such as Veteran's benefits, Railroad Retirement benefits, and occasionally child support or private insurance benefits.
- Supplemental Security Benefits (SSI) have an asset limit of \$2000, are based on financial need rather than contributions by wage-earners, and are provided to children with a disability. The base monthly SSI benefit amount is the same for all recipients and is published annually by the Social Security Administration. For 2008, the SSI benefit amount is \$637.00 per month. As part of its fiduciary duty, DCF must ensure that funds in the Master Trust current needs sub account do not exceed \$2000 for children who receive SSI. See § 402.17 and 65C-17.003, F.A.C. Certain assets are excluded from this provision, including normal possessions such as clothing, books, electronic equipment, etc.
- SSA benefits are available for a child of an individual who is age 62 or above, disabled (SSDI Benefits) or deceased (Survivor's Benefits), and are based on the wage-earner's contributions to Social Security. The child beneficiary must be under the age of 18; or in elementary school or secondary school and under the age of 19; or disabled before the age of 22. 20 C.F.R. 404. The monthly benefit amount will depend upon the income of the parent from whom the benefit flows, during the period of employment on which the benefit is based. Children who receive these benefits are not subject to an asset limit, so their Master Trust accounts may exceed \$2000.
- Once the child qualifies for social security benefits, the Social Security Administration will designate a representative payee to receive the benefits on behalf of the child. DCF or the community based care agency typically will be the representative payee unless another responsible adult has been identified. § 402.33(3); 65C-17.002(8) F.A.C.

- DCF has additional fiduciary duties as trustee over Master Trust funds pursuant to § 402.17.
- Pursuant to 65C-17.002(12) F.A.C., the master trust allows for sub-accounts to meet the needs of the child such as:
 - Current Needs Sub-Account: The funds in this account are used for the child's ongoing, recurring, monthly needs. These funds may also be used for clothing, personal items, sports activities, computers, recreational activities, and similar items. DCF's maintenance fees are withdrawn from this account. Funds in this account are subject to the SSI asset limit of \$2000. Current needs are defined in detail in 65C-17.002(3) F.A.C.
 - Lump Sum Special Needs Sub-Account (or Dedicated Sub-Account): The funds in this account may only be used for specially designated medical services and goods that are related to the disabled child's special needs, or otherwise with special permission of the SSA. The SSI asset limit of \$2000 does not apply to funds in this account. Often a child will receive a lump sum retroactive SSI benefit in several payments when eligibility is established prior to the commencement of actual payments. Lump sum payments are placed in this account. Underpayments by the SSA and past-due benefits also result in funds that, if deposited in the current needs account, would render the child immediately ineligible for SSI benefits.
 - Plan to Achieve Self-Support (PASS) Sub-Account for Disabled Children: The funds in this account must be used to effectuate a PASS, a plan approved by the SSA for long-term vocational or educational needs of the disabled child. As long as this plan is in effect, the child's funds may be deposited into this account without affecting SSI asset limits. 65C-17.003(2) F.A.C. This rule also requires DCF to create a PASS, independent living, or other case plan to submit to the dependency court and the Social Security Administration.
 - Sub-Account for Children who Receive SSA, Veteran's Benefits or Other Regular Benefits: The funds in this account must be used to effectuate long-term vocational or educational goals as defined in 65C-17.002(7) F.A.C. The children who receive SSA, Veteran's Benefits, or other regular benefits are eligible for a PASS-ND (non-disabled) plan, which serves as all or part of the required case plan for independent living transition services, pursuant to § 409.1451(4). These plans are not submitted to the SSA but must be filed in the court's case file.

What can the court do during the initial stages of the case?

The best practice would be for the court to determine if the child in fact receives Social Security Administration (SSA) benefits or SSI benefits. If the child does not receive social security funds and the court believes the child may qualify, it would benefit the child if the court ordered DCF/CBC to apply for social security disability funds on behalf of the child. It takes approximately three to six months from the date of the initial application for the child to begin receiving the funds, assuming the application is granted upon the initial filing.

What can the court do at a subsequent hearing?

It would benefit the child if the court required the case worker to file a spending plan that budgets for the child's needs. If the child is old enough to understand, the child should have input into the plan. Children usually receive SSI because they have a disability, so the case worker should look for ways to spend SSI money to ameliorate the effects of that disability. Possible expenses include the following:

- tutoring for children with learning disabilities
- therapies that are not otherwise covered by Medicaid
- music or art lessons
- sports equipment
- afterschool activities
- an allowance

The court may also wish to require the case worker to report the balance in the Master Trust Account. If the child is receiving SSI, the amount must not exceed \$2000, and the case worker should have a plan in place as to how the money will be spent so that the limit is not exceeded. 65C-17.003(1) F.A.C. requires the case worker to keep the child informed of all purchases from the Master Trust account. If the expenditures equal \$500 or more, the case worker must notify the child's parents (if prior to TPR), the guardian ad litem, and the child's attorney. 65C-30.006(4)(f) F.A.C. states that Master Trust quarterly accounting reports should be filed with the court as attachments to the case plan.

What can the court do at the judicial review hearing:

The court has an opportunity to review the quarterly master trust accounting. Rule 65C-17-006(1) F.A.C. requires DCF to provide a quarterly Master Trust accounting in the judicial review social study report. (JRSSR).

The court may inquire if the child has a PASS (Plan for Achieving Self Sufficiency) account. If the child is near the age of 18 and if the youth has a source of income other than SSI, he or she may be able to accumulate assets in excess of \$2,000 in a PASS plan. 65C-17.003(2) F.A.C. PASS is a Social Security program designed to allow people with disabilities to accumulate and use assets for the purpose of enhancing their employment opportunities without jeopardizing their SSI (and as adults, their disability) benefits. The money must be saved for a specific job or education-related purpose such as to purchase a vehicle to drive to work or to purchase work-related tools. A PASS plan must be approved by the Social Security Administration before money can be set aside. SSI money cannot be saved in a PASS plan.

The court could also ensure that any remaining money in the child's Master Trust Account has been disbursed to the child if the child has reached 18 years of age. § 402.17(7).

The court may verify that DCF has provided notice of the child's right to request a fee waiver with every judicial review. Rule 65C-17.005(1) F.A.C. If the child is in need of a lump sum for a limited duration, the child may request a cost of care waiver. States are allowed to use Social Security (SSA) funds to reimburse themselves for the costs incurred in providing services to children in foster care; however, the child may request a full or partial waiver of the cost of care. This request can be made at any time. The request should be case specific, with necessary documentation attached to the request. Rule 65C-17.005(2), F.A.C. Fee waivers are ordinarily of limited duration or for a limited sum, for example, the need for a

security and utility deposit when a child transitioning to independent living. Fee waivers may be used to pay for:

- specialized classes if the child has a special talent or interest such as music, arts, or sports
- visual aids or wheelchair for mobility-limited child
- remedial tutoring
- items required to implement the child's independent living or PASS plan
- prepaid college tuition program
- childcare if the youth is a parent

The fee waiver is not a substitute for other available resources such as educational supports under an IDEA individual education plan (IEP). Appeals of denials of fee waivers are handled by the Division of Administrative Hearings (DOAH) under Chapter 120. See § 402.33(7), Fla. Stat.

Children in DCF's custody who receive SSI or SSA benefits are entitled to two types of allowances:

- Foster Care Allowance - All children in DCF's custody are entitled to receive a monthly case allowance. 65C-17.002(6) F.A.C. This money is to be given to them by the foster parent or group home operator and is included in the foster care board payment sent to the foster parent for the personal needs of each child living in the home. CBCs determine the amount of allowance for youth; the current range is typically \$10-20 per month.
- Personal Allowance - Youth for whom the cost of care is being deducted from their Master Trust Account are also entitled to a personal allowance. This is an additional amount set aside for the child's personal needs before any funds are applied to the cost of care. The child does not actually receive this money as spending money; rather it is available to the case worker to be used for the child's needs. The minimum amount set aside as personal allowance is \$15 per month. 65C-17.002(9), F.A.C. However, the child's needs must be considered before DCF's maintenance fee is withdrawn. So, if for example, the child needs \$30 per month to participate in a school club, the personal allowance could be increased if those funds are available. 65C-17.004(9) F.A.C.

If the child is 18 or is discharged from DCF's custody, it would be of great benefit for the court to verify that a motion has been filed.

Regarding the disbursement of the funds:

- DCF may release the money to the child or as the child directs. Department of Children and Families v. R.G., 950 So. 2d 497 (Fla. 5th DCA 2007).
- If a physical or mental disability renders the child unable to handle financial affairs, DCF must apply for a court order to establish a trust on behalf of the child (if no relative or friend of the child is available, then DCF is the trustee of this new trust). § 402.17(7)(c).

If the child is under 18 and leaves the custody of DCF due to an adoption or other permanent placement, DCF must seek a court order directing disposition of the money and property. § 402.17(7).